

Article 2E.

Armed Habitual Felon.

§ 14-7.35. Definitions.

The following definitions apply in this Article:

- (1) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the firearm-related felony.
- (2) "Firearm-related felony." – Any felony committed by a person in which the person used or displayed a firearm while committing the felony.
- (3) "Status offender." – A person who is an armed habitual felon as described in G.S. 14-7.36. (2013-369, s. 26.)

§ 14-7.36. Armed habitual felon.

Any person who has been convicted of or pled guilty to one or more prior firearm-related felony offenses in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of armed habitual felon and may be charged with that status offense pursuant to this Article.

This Article does not apply to a second firearm-related felony unless it is committed after the conviction of a firearm-related felony in which evidence of the person's use, display, or threatened use or display of a firearm was needed to prove an element of the felony or was needed to establish the requirement for an enhanced or aggravated sentence. For purposes of this Article, firearm-related felonies committed before the person is 18 years of age shall not constitute more than one firearm-related felony. Any firearm-related felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a firearm-related felony. (2013-369, s. 26.)

§ 14-7.37. Punishment.

When any person is charged with a firearm-related felony and is also charged with being a status offender, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article. (2013-369, s. 26.)

§ 14-7.38. Charge of status offense as an armed habitual felon.

(a) The district attorney, in the district attorney's discretion, may charge a person as a status offender pursuant to this Article. To sustain a conviction of a person as a status offender, the person must be charged separately for the principal firearm-related felony and for the status offense of armed habitual felon. The indictment charging the defendant as a status offender shall be separate from the indictment charging the person with the principal firearm-related felony.

(b) An indictment that charges a person with being a status offender must set forth all of the following information regarding the prior firearm-related felony:

- (1) The date the offense was committed.
- (2) The name of the state or other sovereign against whom the offense was committed.
- (3) The dates that the plea of guilty was entered into or conviction returned in the offense.
- (4) The identity of the court in which the plea or conviction took place.

(c) No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period. (2013-369, s. 26.)

§ 14-7.39. Evidence of prior convictions of firearm-related felonies.

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the firearm-related felony shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former firearm-related felony. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein. (2013-369, s. 26.)

§ 14-7.40. Verdict and judgment.

(a) When an indictment charges a person with a firearm-related felony as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal firearm-related felony as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal firearm-related felony with which the defendant is charged.

(b) If the jury finds the defendant guilty of the principal firearm-related felony, and it is found as provided in this section that (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal firearm-related felony offense as provided by law. (2013-369, s. 26.)

§ 14-7.41. Sentencing of armed habitual felon.

(a) A person who is convicted of a firearm-related felony and is also convicted of the status offense must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class C felon (except where the felon has been sentenced as a Class A, B1, or B2 felon). However, in no case shall the person receive a minimum term of imprisonment of less than 120 months. The court may not suspend the sentence and may not place the person sentenced on probation.

(b) In determining the prior record level, any conviction used to establish a person's status as an armed habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes.

(d) A sentence imposed under this Article may not be enhanced pursuant to G.S. 15A-1340.16A. (2013-369, s. 26.)